



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

September 10, 2003

Ms. Denise G. Obinegbo
Open Records Specialist
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2003-6360

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187420.

The City of Richardson (the "city") received a request for all documents contained in a personnel file and all payroll records regarding a former Richardson police officer. You indicate that you have released some of the requested information, but argue that the remainder of the requested information is excepted from disclosure under sections 552.117 and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The city claims protection for some of the submitted information under section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of peace officers, regardless of whether the officer elected confidentiality under section 552.024 of the Government Code. *See Gov't Code § 552.117(2). See also Open Records Decision No. 670 (2001) (providing that a governmental body may withhold the home address, home telephone number, personal cellular phone number, social security number, and family member information of a peace officer under section 552.117(2)).* We agree that the city must withhold the information you have marked under section 552.117(2). We have marked additional information protected by section 552.117(2) which must be withheld.

The city also claims that a portion of the submitted information is excepted under section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a

fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The submitted information contains a photograph depicting a peace officer, and there is nothing to indicate that any of the exceptions are applicable. Additionally, it does not appear that the peace officer has executed a written consent to disclosure. Thus, we agree that the information you have marked is protected from disclosure by section 552.119. We have marked additional photographic information that must be withheld under section 552.119.

Additionally, we note that some submitted information is protected from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We agree with the information you have marked under section 552.130. We have marked additional driver's license and vehicle information that must be withheld pursuant to section 552.130.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes.¹ Section 1703.306 of the Occupations Code provides that "a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination to another person other than: (1) the examinee or any other person specifically designated in writing by the examinee." Occ. Code § 1703.306(a)(1). Thus, in accordance with sections 552.101 and 1703.306, the city must withhold the polygraph information that we have marked.

Section 1701.306 of the Occupations Code, which makes declarations of medical condition and of psychological and emotional health confidential, provides:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

¹ The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306 (emphasis added). We have marked the information that must be withheld under section 552.101 pursuant to section 1701.306 of the Occupations Code.

Section 552.101 also encompasses the doctrine of common law privacy. Information is protected under the common law right to privacy when (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). However, this office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 545 (1990), 523 (1989) (individual's mortgage payments, assets, bills, and credit history), certain personal choices relating to financial transactions between the individual and the governmental body, *see* Open Records Decision No. 600 (1992) (designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Having

reviewed the submitted documents, we conclude that portions of the information, which we have marked, are protected by common law privacy and must be withheld under section 552.101. However, the remaining submitted materials consist primarily of information regarding the employment of the individual in question and, thus, are of legitimate concern to the public. *See* Open Records Decision Nos. 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Therefore, the city may not withhold remaining submitted materials under section 552.101 and common law privacy.

In summary, we conclude that pursuant to section 552.119, the city must withhold any photograph depicting a peace officer. The city must withhold Texas driver's license, license plate, and motor vehicle information pursuant to section 552.130. Additionally, the city must withhold certain personal information pursuant to section 552.117. In conjunction with section 552.101, the city must withhold: 1) the declaration of medical condition and of psychological and emotional health we have marked under section 1701.306 of the Occupations Code; 2) information we have marked pursuant to section 1703.306 of the Occupations Code; and 3) information we have marked that is protected by common law privacy. All remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

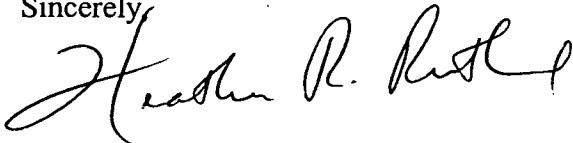
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather R. Rutland
Assistant Attorney General
Open Records Division

HRR/sdk

Ref: ID# 187420

Enc: Submitted documents

c: Mr. Doug Murphy
Trichter, Murphy & Overstreet, P.C.
200 Smith Street
Houston, Texas 77002
(w/o enclosures)